

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1874 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHBHAI WALJIBHAI WAGHELA

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner
Mr. D.P. Joshi for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

Heard learned Advocate Miss Banna Dutta for
Advocate Miss K.U. Mishra and learned A.P.P. Mr. D.P.
Joshi for the respondents.

The detention order dated 7-1-1999 passed by the
respondent no.1-Commissioner of Police, Ahmedabad City
against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of " PASA", copy of which is produced at Annexure "C" inter alia indicate that nine prohibition cases are registered against the petitioner at different Police Stations in between 3-10-1998 and 30-12-1998 That in each of the cases countrymade liquor has been seized from the possession of the petitioner. That except the first case all other cases are pending investigation while the first case is pending trial. proceedings are pending in Court for trial. Over and above the abovestated material , two witnesses on assurance of their annonymity have supplied information about the bootlegging activity of the petitioner.

3. That in consideration of the said material, the respondent no.1- Police Commissioner has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and cancellation of bail. That thereby, on account of non application of mind, the subjective satisfaction having been vitiated the order is invalid.

5. On scrutiny of papers, it appears that in the penultimate paragraph of the grounds of detention, the detaining authority has observed that the petitioner was in judicial custody in respect to criminal cases registered against him and in one of the cases, he was in remand custody. However, the detaining authority has shown apprehension that the petitioner might apply at any time for bail on completion of remand period and after getting himself released on bail the petitioner is likely to continue his antisocial bootlegging activity and as such, it is necessary to pass the impugned order. The said observation clearly indicate that the detaining authority has failed to consider the less drastic remedy as available under Section 437(5) of the Criminal Procedure Code. That on account of the same, the impugned order is rendered invalid.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

7. In the instant case also, the detaining authority having failed to consider the aspect of less drastic remedy opposing and cancellation of bail discloses the non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction rendering the impugned order invalid.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-1-999 passed by the respondent no.-Police Commissioner,Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu Mukeshbhai Vasljibhai Waghela is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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